

1 H BILL NO. 322  
 2 INTRODUCED BY Metcalf, Kuhl, Waldron, Holmes  
 3 Cooney, Courtney, Hamington, Hirst, Sheldon  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE MINIMUM PRICE USE

5 FIXING OF MILK AT THE WHOLESALE AND RETAIL LEVEL SO AS TO  
 6 PROHIBIT SALE OF MILK AS A LOSS LEADER IN MARKETS, TO  
 7 ESTABLISH MAXIMUM PRICE FIXING OF MILK AT THE WHOLESALE AND  
 8 RETAIL LEVEL, TO ELIMINATE PRICE FIXING FOR THE JOBBING OF  
 9 MILK, AND TO REQUIRE LICENSING OF MILK RETAILERS; AMENDING  
 10 SECTIONS 27-406, 27-407, 27-408, 27-409, 27-410, AND 27-414,  
 11 R.C.M. 1947."

12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 27-406, R.C.M. 1947, is amended to  
 15 read as follows:

16 "27-406. Markets. (1) Pursuant to the declaration of  
 17 policy relating to milk set forth in section 27-401, the  
 18 department shall designate natural marketing areas which  
 19 shall together embrace all the geographical area of the  
 20 state and shall enforce minimum producer and maximum  
 21 wholesaler and retail prices established for those areas by  
 22 the board.

23 (2) Natural marketing areas shall be established  
 24 throughout the state by the department. Before a proposed  
 25 natural marketing area is established, the department, after

1 notice of at least ~~thirty~~(30) days, shall hold a hearing or  
 2 hearings, at a place or places within the proposed area, at  
 3 which producers and distributors doing business within the  
 4 proposed natural marketing area who are licensed by the  
 5 department of livestock and the consuming public may  
 6 present evidence and testify. If the hearing or hearings  
 7 make it evident to the department that the establishment of  
 8 the proposed natural marketing area is in the public  
 9 interest, the department shall establish the natural  
 10 marketing area.

11 (3) The department may from time to time adjust the  
 12 boundaries of natural marketing areas, if after a hearing  
 13 upon notice of at least ~~thirty~~(30) days to all interested  
 14 parties it finds the adjustment to be in the public  
 15 interest."

16 Section 2. Section 27-407, R.C.M. 1947, is amended to  
 17 read as follows:

18 "27-407. Establishment of minimum and maximum prices  
 19 and profit level. (1) The board shall fix minimum producer  
 20 and maximum wholesaler, jobbery and retail prices for class  
 21 I milk, and minimum producer prices only for class II and  
 22 class III milk in all areas of the state, by adopting rules  
 23 in a manner prescribed by the Montana Administrative  
 24 Procedure Act. The cost of processing and delivering milk  
 25 shall be established by the board by surveying all

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1 ~~processing plant and retailer costs and calculating a~~  
 2 ~~weighted average cost of doing business. The board shall~~  
 3 ~~also establish a minimum profit level below which no milk~~  
 4 ~~may be sold at wholesale or retail, in order to prevent the~~  
 5 ~~sale of milk as a loss leader in markets.~~

6 (2) The board shall establish such prices by means of  
 7 flexible formulas ~~and cost studies~~ which shall be devised so  
 8 that they bring about such automatic changes in all ~~minimum~~  
 9 ~~maximum~~ prices as are justified on the basis of changes in  
 10 production costs and supply, processing, ~~and~~ distribution  
 11 costs, and retailing costs.

12 (3) The board shall consider the balance between  
 13 production and consumption of milk, the costs of production  
 14 and distribution, and prices in adjacent and neighboring  
 15 areas and states, so that ~~minimum~~ prices which are fair and  
 16 equitable to producers, distributors, ~~jobbers,~~ retailers,  
 17 and consumers may result.

18 (4) The board shall, when publishing notice of  
 19 proposed rule making under authority of this section, set  
 20 forth the specific factors which shall be taken into  
 21 consideration in establishing the formulas and in particular  
 22 in determining costs of production and distribution and of  
 23 the actual dollars and cents costs of production and  
 24 distribution which preliminary studies and investigations of  
 25 auditors or accountants in its employment indicate will or

1 should be shown at the hearing, so that all interested  
 2 parties will have opportunity to be heard and to question or  
 3 rebut such considerations as a matter of record.

4 (5) Such specific factors may include, but shall not  
 5 be limited to, the following items:

6 (a) ~~Current~~ ~~current~~ and prospective supplies of milk  
 7 in relation to current and prospective demands for such milk  
 8 for all purposes;

9 (b) ~~The~~ ~~the~~ ability and willingness of consumers to  
 10 purchase, which shall include among other things, per capita  
 11 disposable income statistics, consumer price indices, and  
 12 wholesale price indices;

13 (c) ~~The~~ ~~the~~ cost factors in producing milk, which  
 14 shall include among other things the prices paid by farmers  
 15 generally (as used in parity calculations of the United  
 16 States Department ~~department~~ of Agriculture ~~agriculture~~),  
 17 prices paid by farmers for dairy feed in particular, and  
 18 farm wage rates in this state;

19 (d) ~~The~~ ~~the~~ alternative opportunities, both farm and  
 20 nonfarm, open to milk producers, which shall include, among  
 21 other things, prices received by farmers for all products  
 22 other than milk, prices received by farmers for beef cattle,  
 23 and the percentage of unemployment in the state and nation  
 24 as determined by appropriate state and federal agencies;

25 (e) ~~The~~ ~~the~~ prices of ~~butter-nonfat~~ ~~butter,~~ ~~nonfat~~ dry

1 milk, and cheese;

2 (f) The ~~the~~ cost factors in distributing milk, which  
3 shall include among other things the prices paid by  
4 distributors for equipment of all types required to process  
5 and market milk and prevailing wage rates in this state;

6 ~~{g}--The--cost--factors--in--jobbing--milk,--which--shall  
7 include--among--other--things--raw--product--and--ingredient--costs,  
8 carton--or--other--packaging--costs,--processing--cost--and--that  
9 part--of--general--administrative--costs--of--the--supplying  
10 distributor--which--may--properly--be--allocated--to--the--handling  
11 of--milk--to--the--point--at--which--such--milk--is--at--the--supplying  
12 distributor's--dock,--equipment--of--all--types--required--to  
13 market--milk--and--prevailing--wage--rates--in--the--state~~

14 ~~{h}{g}~~ The ~~the~~ need, if any, for freight or  
15 transportation charges to be deducted by distributors from  
16 producer prices for bulk milk;

17 ~~{i}{h}~~ \* a reasonable return on necessary investment  
18 to all ordinarily efficient and economical milk dealers.

19 (6) If the board at any time proposes to base all or  
20 any part of any official order establishing or revising any  
21 milk pricing formulas upon facts within its own knowledge,  
22 as distinguished from evidence which may be presented to it  
23 by the consuming public or the milk industry, the board  
24 shall, when publishing notice of proposed rule making under  
25 authority of this section, cause notice to be given to the

1 consuming public and the milk industry of the specific facts  
2 within its own knowledge which it will consider, so that all  
3 interested parties will have opportunity to be heard and to  
4 question or rebut such facts as a matter of record.

5 (7) The board, after consideration of the evidence  
6 produced, shall make written findings and conclusions and  
7 shall fix by official rule:

8 (a) The ~~the~~ formula whereby minimum producer prices  
9 for milk in classes I, II, and III shall be computed;

10 (b) The ~~the~~ formula whereby minimum ~~maximum~~ wholesale  
11 prices for milk in class I shall be computed; and

12 ~~{c}--The--formula--whereby--minimum--jobber--prices--for--milk  
13 in--class--I--shall--be--computed;~~

14 ~~{d}{c}~~ The ~~the~~ formula whereby minimum ~~maximum~~ retail  
15 prices for milk in class I shall be computed.

16 (8) This section shall not be construed as requiring  
17 the board to promulgate any specific number of formulas, but  
18 shall be construed liberally so that the board may adopt any  
19 reasonable method of expression to accomplish the objective  
20 set forth in ~~{7}(a), {7}(b), {c}, and {d} above~~ and ~~{7}(c)~~  
21 ~~above~~. If the evidence presented to the board at any public  
22 hearing for the establishment or revision of milk pricing  
23 formulas is found by the board to require the establishment  
24 of separate and varying wholesale prices for any particular  
25 uses, the board shall designate the reasons therefor and

1 establish such separate formulas.

2 (9) Each rule establishing or revising any milk  
3 pricing formulas shall classify milk by forms, classes,  
4 grades, or uses as the board may deem advisable and shall  
5 specify the minimum ~~or maximum~~ prices therefor.

6 (10) The milk produced in one natural marketing area  
7 and sold in another natural marketing area shall be paid for  
8 by a distributor or dealer in accordance with the pricing  
9 order of the area where produced at the price therein  
10 specified of the class or use in which it is ultimately used  
11 or sold.

12 (11) No allowance for freight, other than freight for  
13 transportation of milk from the farm to plant, shall be  
14 charged to a producer by a distributor or dealer unless it  
15 is found and ordered by the board, after notice and hearing  
16 in the manner hereinbefore specified, that such an  
17 additional freight allowance is necessary to permit the  
18 movement of milk in the public interest.

19 (12) All milk purchased within a natural marketing area  
20 by a distributor shall be purchased on a uniform basis. The  
21 basis to be used shall be established by the board after the  
22 producers and the distributors of the area have been  
23 consulted.

24 (13) The board may amend any official rule in the same  
25 manner provided herein for the original establishment of

1 milk pricing formulas; provided, further, the board may in  
2 its discretion, when it determines the need exists, notice  
3 and hold ~~state-wide~~ statewide public hearings affecting  
4 establishment or revision of milk pricing formulas in all  
5 market areas of the state.

6 (14) Upon petition of a distributor or a majority of  
7 his producers, the board shall hold a hearing to receive and  
8 consider evidence regarding the advisability and need for a  
9 base or quota plan as a method of payment by that  
10 distributor of producer prices; and if the board finds that  
11 the evidence adduced at such hearing warrants the  
12 establishment of a base or quota plan, the board shall  
13 proceed by official order to establish the same.

14 (15) Upon ~~the board's own motion or upon~~ petition by  
15 any producer, producer-distributor, or distributor in any  
16 marketing area, the board shall hold a hearing to receive  
17 and consider evidence regarding the advisability and need  
18 for an ~~area-wide~~ areawide or ~~state-wide~~ statewide pooling  
19 arrangement as a method of payment of producer prices,  
20 provided that at such hearing the board shall among other  
21 things specifically receive and consider evidence concerning  
22 production and marketing practices which have historically  
23 prevailed in the area concerned or ~~state-wide~~ statewide, as  
24 the case may be, ~~and--if~~ If the board finds that the  
25 evidence adduced at such hearing warrants the establishment

1 of such an ~~area-wide~~ areawide or ~~state-wide~~ statewide  
 2 pooling arrangement, the board shall proceed by official  
 3 order to establish the same; ~~but such official order shall~~  
 4 ~~be of no force or effect until it is approved in a~~  
 5 ~~referendum conducted by the board among affected producers,~~  
 6 ~~producer-distributors, and distributors.~~

7 (16) The requirements hereinabove set forth concerning  
 8 notices of hearings for the establishment of milk pricing  
 9 formulas shall apply to any hearings regarding base or quota  
 10 plans or ~~area-wide~~ areawide or ~~state-wide~~ statewide pooling  
 11 arrangements, or abandonment thereof."

12 Section 3. Section 27-408, R.C.M. 1947, is amended to  
 13 read as follows:

14 "27-408. Licenses to producers, producer-distributors,  
 15 distributors, and jobbers, and retailers. In any market,  
 16 where the provisions of this chapter apply, it is unlawful  
 17 for a producer, producer-distributor, distributor, or  
 18 jobber, or retailer to produce, transport, process, store,  
 19 handle, distribute, buy, or sell milk unless the dealer is  
 20 properly licensed ~~as provided by this chapter~~. It is  
 21 unlawful for a person to buy, sell, handle, process, or  
 22 distribute milk which he knows or has reason to believe has  
 23 been previously dealt with or handled in violation of any  
 24 provision of this chapter. The department may decline to  
 25 grant a license, or may suspend or revoke a license already

1 granted, upon due cause and after hearings."

2 Section 4. Section 27-409, R.C.M. 1947, is amended to  
 3 read as follows:

4 "27-409. Licenses -- disposition of income. (1) A  
 5 producer, producer-distributor, distributor, or jobber, or  
 6 retailer may not engage in the business of producing or  
 7 selling milk subject to this chapter in this state without  
 8 first having obtained a license from the department of  
 9 livestock or, in the case of milk entering this state from  
 10 another state or foreign nation, without complying with the  
 11 requirements of the Montana Food, Drug and Cosmetic Act, and  
 12 without being licensed under this chapter by the department.  
 13 ~~The annual fee for the license from the department is two~~  
 14 ~~dollars (\$2), and is due before July 1, and shall be~~  
 15 ~~deposited by the department to the credit of the general~~  
 16 ~~fund. There shall be no fee for the license which will be~~  
 17 ~~issued upon receipt of a properly executed application and~~  
 18 ~~which will remain in effect until revoked or suspended by~~  
 19 ~~the board or until the business moves to a new location or~~  
 20 ~~goes out of business.~~

21 (2) ~~In addition to the annual license fee, the~~ the  
 22 department shall, in each year, before April 1, for the  
 23 purpose of securing funds to administer and enforce this  
 24 chapter, levy an assessment upon producers,  
 25 producer-distributors, and distributors as follows:

1 (a) \* a fee per hundredweight on the total volume of  
2 all milk subject to this act produced and sold by a  
3 producer-distributor;

4 (b) \* a fee per hundredweight on the total volume of  
5 all milk subject to this act sold by a producer; and

6 (c) \* a fee per hundredweight on the total volume of  
7 all milk subject to this act sold by a distributor,  
8 excepting that which is sold to another distributor.

9 (3) The department shall adopt rules fixing the amount  
10 of each fee. The amounts may not exceed levels sufficient  
11 to provide for the administration of this act. The fee  
12 assessed on a producer or on a distributor may not be more  
13 than one-half ~~(1/2)~~ the fee assessed on a  
14 producer-distributor.

15 (4) The assessment upon producer-distributors,  
16 producers, and distributors shall be paid quarterly before  
17 January 15, April 15, July 15, and October 15, of each year.  
18 The amount of the assessment shall be computed by applying  
19 the fee designated by the department to the volume of milk  
20 sold in the preceding calendar quarter.

21 (5) Failure of a producer, producer-distributor, or  
22 distributor to pay an assessment when due is a violation of  
23 this chapter and his license ~~under---this---chapter~~  
24 automatically terminates and is void. A license so  
25 terminated shall be reinstated by the department upon

1 payment of a delinquency fee equal to ~~thirty-per-cent-(30%)~~  
2 of the assessment which was due.

3 (6) All assessments required by this chapter shall be  
4 deposited by the department in the earmarked revenue fund.  
5 All costs of administering this chapter, including the  
6 salaries of employees and assistants, per diem and expenses  
7 of board members, and all other disbursements necessary to  
8 carry out the purpose of this chapter, shall be paid out of  
9 control board moneys in that fund.

10 (7) The department may, if it finds the costs of  
11 administering and enforcing this chapter can be derived from  
12 lower rates, amend its rules to fix the rates at a less  
13 amount on or before the first day of April in any year."

14 Section 5. Section 27-410, R.C.M. 1947, is amended to  
15 read as follows:

16 "27-410. Application for licenses. An applicant for  
17 license to operate as a producer, producer-distributor,  
18 distributor, or jobber, or retailer shall file a signed  
19 application upon a blank prepared under authority of the  
20 department, and an applicant shall state facts concerning  
21 his circumstances and the nature of the business to be  
22 conducted which in the opinion of the department are  
23 necessary for the administration of this chapter. The  
24 application shall certify the applicant to be the holder of  
25 all licenses required by the department of livestock for

1 the conduct of his business or, in the case of milk entering  
 2 this state from another state or foreign nation, compliance  
 3 with the requirements of the Montana Food, Drug and Cosmetic  
 4 Act. ~~The application shall be accompanied by the license~~  
 5 ~~fee required to be paid."~~

6 Section 6. Section 27-414, R.C.M. 1947, is amended to  
 7 read as follows:

8 "27-414. Rules of fair trade practices. The department  
 9 may adopt reasonable rules governing fair trade practices  
 10 as they pertain to the transaction of business among  
 11 licensees under this chapter and among licensees and the  
 12 general public. Those rules shall contain, but are not  
 13 limited to, provisions prohibiting the following methods of  
 14 doing business which are unfair, unlawful, and not in the  
 15 public interest:

16 (1) ~~The~~ ~~the~~ payment, allowance, or acceptance of  
 17 secret rebates, secret refunds, or unearned discounts by a  
 18 person, whether in the form of money or otherwise; i

19 (2) ~~The~~ ~~the~~ giving of milk, cream, dairy products,  
 20 services, or articles of any kind, except to bona fide  
 21 charities, for the purpose of securing or retaining the  
 22 fluid milk or fluid cream business of a customer; i

23 (3) ~~The~~ ~~the~~ extension to certain customers of special  
 24 prices or services not available to all customers who  
 25 purchase milk of like quantity under like terms and

1 conditions; i

2 (4) ~~The~~ ~~the~~ purchasing, processing, bottling,  
 3 packaging, transporting, delivering, or otherwise handling  
 4 in any marketing area of milk which is to be or is sold or  
 5 otherwise disposed of at less than ~~the minimum wholesale and~~  
 6 ~~minimum retail prices~~ the cost of doing business as  
 7 established by the board plus a minimum profit, established  
 8 by the board, to prohibit the sale of milk as a loss leader  
 9 in any market; .

10 (5) ~~The~~ ~~the~~ payment of a price lower than the  
 11 applicable producer price, established by the board, by a  
 12 distributor to a producer for milk which is distributed to  
 13 any person, including agencies of the federal, state, or  
 14 local government."

-End-

## STATE OF MONTANA

REQUEST NO. 176-77

## FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, 19 77, there is hereby submitted a Fiscal Note for House Bill 322 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

## DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 322 is an act to revise minimum price fixing of milk at the wholesale and retail level so as to prohibit the sale of milk as a loss leader in markets, to establish maximum price fixing of milk at the wholesale and retail level, to eliminate price fixing for the jobbing of milk, and to require licensing of milk retailers.

## ASSUMPTIONS:

1. The milk control board will establish the cost of processing and delivering milk by surveying all processing plant and retailer costs and calculating a weighted average cost of doing business.
2. At a minimum, it will be necessary to survey costs on a quarterly basis in order to update the weighted average cost.
3. Because of the voluminous nature of cost data at the processing and retail level, it will be necessary to physically audit cost data to insure accuracy.
4. The compilation of cost data will act as a means of evaluating the mathematical pricing formula variables.
5. There will be a requirement for additional hearings under this act.
6. Deletion of the provision for a \$2 license fee provided in Section 27-409 will have a minimal fiscal effect.

## FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Personal services	\$14,602	\$15,624
Operating expenses	<u>9,100</u>	<u>8,250</u>
Increased expenditure under proposed law	<u>\$23,702</u>	<u>\$23,874</u>

*Richard L. Drury*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-27-77